IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 865 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NITINBHAI RAVISHANKAR DAVE

Versus

STATE OF GUJARAT

Appearance:

MR JIVANLAL G SHAH for Petitioner

Mr K G Sheth, APP for Respondent No. 1

MR JAYANT PATEL for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 12/04/2001

ORAL JUDGEMENT

The present Criminal Revision Application has been filed under Section 397 of the Code of Criminal Procedure read with sections 401 and 482 challenging the order of the learned Special Judge, City Sessions and

Special Court at Ahmedabad dated 30.4.1991 in Special Case No.14/89, under which the learned Judge dismissed the application of the present petitioner for discharging him from the offence with which he stood charge-sheeted. The petitioner along with other accused persons have been charge-sheeted for having committed offence under Section 426, 120-B, 465 and 471 of the Indian Penal Code read with sections 5(2) and 5(1)(d) of the Prevention of Corruption Act.

2. The present revision petitioner had submitted an application before the said Court at Exh.19 on 4.2.1991 stating that no offences as alleged against him has been committed by him and there is no case against him for having committed the said offences and, therefore, he should be discharged. After hearing the learned Advocates for the parties, the learned Judge came to a decision that there was prima facie case made out against the present petitioner and, therefore, he dismissed the said application of the present petitioner. Feeling aggrieved by the order of the learned Special Judge, the petitioner has preferred this Revision before this Court. It has mainly been contended here that there is no evidence prima facie to connect the present revision petitioner with the crime in question and he should have been discharged by the learned Special Judge. That the learned Special Judge has committed serious illegality in not discharging the petitioner and, therefore, the order the learned Special Judge is illegal and erroneous and deserves to be set aside. It is, therefore, prayed that the present revision be allowed and the petitioner herein be discharged from the offence with which he has been charge-sheeted before the learned Special Judge.

3. Rule was issued. Mr K G Sheth, learned APP appears in response to service of rule. I have heard Mr J G Shah and Mr K G Sheth for the parties and have perused the papers. Mr J G Shah, learned Advocate appearing for the petitioner has argued at length to the effect that there is absolutely no material on record on the basis of which a charge could be framed for any of the offences, in respect of which the charge sheet has been filed against the petitioner before the Special Judge, and therefore, the petitioner ought to have been discharged by the learned Special Judge. Mr J G Shah, learned Advocate has also taken me through the statement of Govind Savaliya, who was initially shown as co-accused but now he is approver.

4. It seems to be the case of the prosecution that this witness Govindbhai did not have any buffalo at any

point of time. Despite the said position, a show was made that he possessed buffalo and loan was obtained for the said purpose. Thereafter, it was shown that insurance was taken for the said buffalo and subsequently it was shown that the buffalo died and, therefore, this witness Govindbhai was entitled to claim insurance money in respect of the said buffalo. It is the case of the prosecution that the present petitioner was a Veterinary Doctor and though Govindbhai did not have any buffalo at any point of time, he participated in the matter as part of criminal conspiracy and he also made a show that he had examined the buffalo in past and had given some medicines. He also made a show that the buffalo of Govindbhai died and he was required to perform post mortem in respect of the said buffalo. That post mortem note was prepared by him and the said claim for the insurance money in favour of Govindbhai was pushed ahead. Therefore, according to the case of the prosecution, the present petitioner was a party to the said criminal conspiracy. That though Govindbhai did not have any buffalo, the petitioner made a show that he had examined the buffalo of Govindbhai who did not possess any buffalo, story was aalso made out that the buffalo died and he performed the post mortem on the buffalo.

5. So far as Govindbhai is concerned he has definitely said that he never had any buffalo and he never purchased buffalo from Babbar. Since he did not have any buffalo, there is no question of death of his buffalo. Mr J G Shah has argued on behalf of the petitioner that the approver's evidence is required to be corroborated in material particulars and unless there is some corroborative evidence, the Court cannot rely upon the evidence of approver.

6. This means that we are required to scrutinise the evidence at the stage of framing charge. Even otherwise, the learned Special Judge has observed at page 22 that one Parthasarathy has given his statement referring to certain documents wherein he has referred to a document of the Village Register which is required to be prepared and maintained at Village level to show the cattles owned or possessed by the persons residing in the village. On the strength of verification of the said register, a statement has come on record that witness Govindbhai never possessed any buffalo at any point of time as per the entries made in the said register. Therefore, there was some material before the learned Special Judge to corroborate the statement of Govindbhai that he never had any buffalo. So far as the post mortem note and other papers are concerned, there is evidence to show that they

were prepared by the present petitioner. Mr P B Jhala has been examined by the police Investigating Officer and there he has stated that he was working as Dy.Director, Animal Husbandry, District Panchayat at Rajkot. He has also stated that the present petitioner was known to him as he was working under him from 16.10.1996. Then on perusal of the file and cattle insurance papers, he has stated that there are hand-writings of the present petitioner at different places in the said document. Therefore, it is clear that there is prima facie case of involvement of the petitioner in the aforesaid case. Sufficiency of evidence cannot be gone into at the stage of framing of charge. Only prima facie case is required to be considered and viewing the matter from that angle, I am of the view that the learned Special Judge has considered this aspect at length and he has recorded a detailed order giving reasons for not allowing the application of the petitioner for discharging him from the case in question. In such matters of revision application, the revisional Court has to be slow and unless the order passed by the lower court is found to be ex-facie illegal, it would not be proper and possible for this court to interfere with the said finding of fact recorded by the Special Judge. The learned Special Judge has positively recorded the finding of fact regarding involvement of the present petitioner in the aforesaid offence in detailed discussion of the material before him. There is no reasons to differ from the view taken by the learned Special Judge. Consequently, there is no merit in the present revision and, therefore, it is required to be dismissed.

This Revision Application is accordingly dismissed. The interim relief stands vacated. Rule discharged.

12.4.2001 [D P Buch, J.]
msp